IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION.

WRIT PETITION NO. 1557 OF 2006 .

M/s Shri Sai Processors ... Petitioners.

V/s.

Union of India & ors. ... Respondents.

Mr. S.Shreedharan with Prakash Shah i/b M/s PDS Legal for the petitioner.

Mr. P.S. Jetly for the respondents.

CORAM : V.C.DAGA & J.P.DEVADHAR,JJ.

DATED : 19.6 .2006.

P.C. :

. Heard.

2. Rule returnable forthwith. Mr. Jetly waives service on behalf of the respondents. By consent of parties petition is taken up for final hearing.

3. This petition is directed against the order of the Tribunal directing pre-deposit in the sum of Rs. 12 lakhs.

4. Learned Counsel appearing for the petitioner brought to our notice that the show cause notice issued by the adjudicating authority was not served on the petitioner and the same was returned to the department with postal endorsement "Not known". In

this view of the matter, he submits that this postal endorsement "Not known" cannot lead to inference or presumption of service. In this view of the matter, the order in original itself is an order in breach of principles of natural justice and, therefore, void ab-initio. He submits that the said aspect has been completely missed by the first appellate authority. He thus submits that considering the prima facie case, no order of pre-deposit could have been made by the Tribunal.

5. Mr. Jetly tried to support the impugned order, but he could not take his submission to logical end. He could not demonstrate how postal endorsement "Not known" would lead to presumption of service.

6. Having heard rival parties, prima facie, we find that this is a fit case where Tribunal ought not to have directed pre-deposit considering strong prima facie case to succeed. In this view of the matter, considering strong prima facie case made out, the impugned order passed by the Tribunal dated 31.1.2006 is liable to be set aside. Thus, impugned order is quashed and set aside. The Tribunal is directed to hear the appeal on merits without insisting upon the pre-deposit and dispose of the appeal as expeditiously as possible, at any rate within one year from the date of receipt of this

order.

7. Needless to mention that in view of the above order application for modification of the order moved by the petitioner would not survive and the same be treated as dismissed for want of cause of action. No order as to costs.

(V.C.DAGA,J.)

(J.P.DEVADHAR,J.)